

that any material event has occurred that would cause the savings association to be placed in a lower capital category from the category assigned to the savings association for purposes of section 38 and this part on the basis of the savings association's most recent TFR or report of examination.

(2) *Determination by the OTS to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the OTS shall determine whether to change the capital category of the savings association and shall notify the savings association of the OTS's determination.

§ 565.4 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 and this part, the relevant capital measures shall be:

- (1) The total risk-based capital ratio;
- (2) The Tier 1 risk-based capital ratio; and
- (3) The leverage ratio.

(b) *Capital categories.* For purposes of section 38 and this part, a savings association shall be deemed to be:

- (1) *Well capitalized* if the savings association:
 - (i) Has a total risk-based capital ratio of 10.0 percent or greater; and
 - (ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and
 - (iii) Has a leverage ratio of 5.0 percent or greater; and
- (iv) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by OTS under section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) *Adequately capitalized* if the savings association:

- (i) Has a total risk-based capital ratio of 8.0 percent or greater; and
- (ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and
- (iii) Has:
 - (A) A leverage ratio of 4.0 percent or greater; or
 - (B) A leverage ratio of 3.0 percent or greater if the savings association is as-

signed a composite rating of 1, as composite rating is defined in § 516.5(c) of this chapter; and

(iv) Does not meet the definition of a *well capitalized* savings association.

(3) *Undercapitalized* if the savings association:

- (i) Has a total risk-based capital ratio that is less than 8.0 percent; or
- (ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or
- (iii) (A) Except as provided in paragraph (b)(3)(iii) (B) of this section, has a leverage ratio that is less than 4.0 percent; or

(B) Has a leverage ratio that is less than 3.0 percent if the savings association is assigned a composite rating of 1, as composite rating is defined in § 516.5(c) of this chapter.

(4) *Significantly undercapitalized* if the savings association has:

- (i) A total risk-based capital ratio that is less than 6.0 percent; or
- (ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or
- (iii) A leverage ratio that is less than 3.0 percent.

(5) *Critically undercapitalized* if the savings association has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Reclassification based on supervisory criteria other than capital.* The OTS may reclassify a well capitalized savings association as adequately capitalized and may require an adequately capitalized or undercapitalized savings association to comply with certain mandatory or discretionary supervisory actions as if the savings association were in the next lower capital category (except that the OTS may not reclassify a significantly undercapitalized savings association as critically undercapitalized) (each of these actions are hereinafter referred to generally as "reclassifications") in the following circumstances:

(1) *Unsafe or unsound condition.* The OTS has determined, after notice and opportunity for hearing pursuant to § 565.8(a) of this part, that the savings association is in an unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The OTS has determined, after notice and an opportunity for hearing pursuant to § 565.8(a) of this part, that the savings

association received a less-than-satisfactory rating for any rating category (other than in a rating category specifically addressing capital adequacy) under the Uniform Financial Institutions Rating System,¹ or an equivalent rating under a comparable rating system adopted by the OTS; and has not corrected the conditions that served as the basis for the less than satisfactory rating. Ratings under this paragraph (c)(2) refer to the most recent ratings (as determined either on-site or off-site by the most recent examination) of which the savings association has been notified in writing.

[57 FR 44903, Sept. 29, 1992, as amended at 62 FR 3781, Jan. 27, 1997; 66 FR 13009, Mar. 2, 2001; 66 FR 65821, Dec. 21, 2001]

§ 565.5 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general.* A savings association shall file a written capital restoration plan with the appropriate Regional Office within 45 days of the date that the savings association receives notice or is deemed to have notice that the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OTS notifies the savings association in writing that the plan is to be filed within a different period. An adequately capitalized savings association that has been required pursuant to § 565.4(c) to comply with supervisory actions as if the savings association were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a savings association that has already submitted and is operating under a capital restoration plan approved under section 38 and this part is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 565.4(c) unless the OTS notifies the savings association that it must submit a new or revised capital plan. A savings association that is notified that it must submit a new or re-

vised capital restoration plan shall file the plan in writing with the appropriate Regional Office within 45 days of receiving such notice, unless the OTS notifies the savings association in writing that the plan is to be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the TFR, unless the OTS instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A savings association that is required to submit a capital restoration plan as the result of a reclassification of the savings association pursuant to § 565.4(c) of this part shall include a description of the steps the savings association will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of the FDI Act by each company that controls the savings association.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this part, the OTS shall provide written notice to the savings association of whether the plan has been approved. The OTS may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If a capital restoration plan is not approved by the OTS, the savings association shall submit a revised capital restoration plan, when directed to do so, within the time specified by the OTS. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized savings association (as defined in § 565.4(b)(3) of this part) shall be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the savings association has been approved by the OTS.

(e) *Failure to submit a capital restoration plan.* A savings association that is undercapitalized (as defined in

¹Copies are available at the address specified in § 516.40 of this chapter.